IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7654 of 1995
With
SPECIAL CIVIL APPLICATION No. 9338 of 1995
With
SPECIAL CIVIL APPLICATION No. 7233 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHAVNAGAR MUNICIPAL CORP. RETIRED EMPLOYEES' UNION - Petitioner(s)
Versus
BHAVNAGAR MUNICIPAL CORP. & 1 - Respondent(s)

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Appearance :
MR JD AJMERA for Petitioner(s) :
MR HS MUNSHAW for Respondent(s) : 1,
MS MANISHA L SHAH, AGP for Respondent(s) : 2,
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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 24/03/2006

ORAL JUDGMENT

1.In this group of petitions, the petitioners who are

retired employees of the Bhavnagar Municipal Corporation have made two fold grievances. Firstly it is the grievance of the petitioners that the pension scheme introduced by the Bhavnagar Municipal Corporation for its employees vide resolution dated 24.8.94 contains cut-off date of 1.4.92 for its application. In the result, the said scheme is available to those employees who were in service as on 1.4.92 and the pension scheme formulated by resolution dated 24.8.94 is not available to the employees who had retired before 1.4.92. It is therefore the case of the petitioners that the cut off date being arbitrary and unreasonable the same should be struck down and the pension scheme formulated by the resolution dated 24.8.94 should be made available to all retirees irrespective of the date of their retirement.

2. The second grievance of the petitioners is with respect to not being included for the purpose of pension scheme said to have been formulated by the Bhavnagar State way back in the year 1948. It is the case of the petitioners that the Corporation had in the year 1948 formulated a pension scheme which was in operation when the petitioners retired and they should have been given the benefits of such a pension scheme.

3. Learned advocate Shri Ajmera appearing for the petitioners submitted that the employees who are involved in this group of petitions are very few in numbers. Admittedly though all of them retired before 1.4.92, their cases could not have been excluded for the purpose of application of newly created pension scheme vide resolution dated 24.8.94. It was contended that the cut-off date is arbitrary and the scheme could have been made available to all retired employees. Additionally it was contended that there is no dispute that the pension scheme was formulated by the Bhavnagar Municipal Corporation in the year 1948. Such pension scheme was in operation when the petitioners retired, that on account of ignorance on the part of the petitioners as well as the employer, the petitioners were not given the benefits of the pension scheme. It is contended that it was the duty of the respondents to pay pension to the petitioners when pension scheme was applicable and merely because the petitioners were not aware about the said scheme, the respondent cannot deny the benefits to the petitioners available under such a scheme.

4. It was also contended that this Court had earlier directed the State Government to consider the

representation of the petitioners with respect to the applicability of the old pension scheme of Bhavnagar State. The Government vide its order dated 1.5.2002 rejected the representation of the petitioners on invalid and unsustainable grounds. In this regard, it was contended that the petitioners had never waived their rights. The petitioners accepted the retiral benefits without any information about the existence of old pension scheme. This cannot be treated as a waiver. It was additionally contended that other employees have been given such pensionary benefits and the petitioners cannot be discriminated.

5. Learned AGP Ms.Shah supported the decision of the Government. She submitted that the petitioners retired and accepted the CPF benefits as well as gratuity payable to them. They now cannot claim benefits either under the new scheme or under the old pension scheme. It was submitted that the petitioners retired long back accepting full retiral benefits at the time of retirement. It was always open for the Corporation to provide a cut-off date in the pension scheme which was newly introduced.

6. Having heard the learned advocates appearing for the parties, I find that the petitioners have not made out

any case so far as the question of cut-off date in the introduction of new pension scheme is concerned. The pension scheme was introduced by the resolution dated 24.8.94 which provided for cut-off date of 1.4.92. Admittedly, this was a new pension scheme and not any improvement or liberalization in the existing scheme. In that view of the matter, the decision of the Hon'ble Supreme Court in the case of Krishena Kumar v. Union of India, AIR 1990 SC 1782 would squarely apply. In the said decision, it was held that when a new pension scheme is being introduced, retirees cannot claim benefits thereof without reference to the cut off date. Distinguishing the ratio laid down by the Hon'ble Supreme Court in the case of D.S.Nakara, AIR 1983 SC 130, the Hon'ble Supreme Court found that the situation would be different when a new pension scheme is being introduced for the first time. This view has been followed by the Hon'ble Supreme Court in series of subsequent decisions in the case of V.Kasturi v. Managing Director, SBI, (1998) 8 SCC 30 and Union of India v. Lieut (Mrs.) E. Iacats, (1997) 7 SCC 334. In that view of the matter, challenge to the cut-off date must fail.

7. Second aspect of the matter pertains to the prayer of

the petitioners for being given benefits of pension as per the old pension scheme of 1948. Primarily, it is doubtful, the said Scheme would be applicable to the petitioners since many legislations thereafter have been enacted. It appears that the said pension scheme was virtually forgotten and lost sight of not only by the employees but the employer as well. Improved benefits of Contributory Provident Fund and gratuity were applied to the employees. The petitioners never raised any grievance about being covered under the CPF Scheme. They received their CPF benefits upon retirement. They also received gratuity amounts payable under the law. Many years thereafter, they cannot turn around and suggest that there was an ancient pension scheme governing the employees and they be given the benefits thereof.

8. Even otherwise, a closer look at the scheme, benefits of which are sought by the petitioner would suggest that there were many clauses which would make the said scheme inapplicable to the petitioners at least. The scheme itself starts with a clause that the employees shall receive either pension or gratuity. The pension was also not compulsory in all cases. In certain cases, gratuity was required to be paid instead of

pension. If one peruses sub-clause F of clause 1 of the Scheme, it provided that if the employee is desirous of receiving pension, he has to produce fitness certificate along with an application for receiving pension. Upon receipt of such an application, the employee will be given pension or gratuity as available to him. Clause 4 of the Scheme further provided that an employee desirous of receiving pension has to make an application along with report in the specified format as provided under the rule which has to be placed before the Committee for its recommendations. All these provisions suggest that the pension was neither compulsory nor to be paid in every case. An employee had to apply for pension and only if found eligible considering his case as well as fulfillment of all other requirements that he would would be paid pension. Gratuity was an option which an employee could have availed of. At the outset, it was made clear that the employee will either get pension or gratuity. In the present case, the petitioners have not only received gratuity, but received CPF benefits flowing from other legislations. Normally, contributory provident fund scheme and pension scheme are mutually exclusive. When the

petitioners received full benefits of CPF scheme and when they also received gratuity though under different legislation, many years thereafter, they cannot now rake up a contention that they were governed by an ancient and forgotten pension scheme of 1948. Some persons might have earlier received such benefits, admittedly, they had all retired long before. It is, therefore, obvious that the Corporation had not continued to give benefits of the said scheme to its employees. The petitioners also had never applied for getting pension under the said Scheme. It was necessary for the employees who were desirous of receiving pension should have applied in the format with necessary documents. It is not possible to reopen such an issue in the fact situation and in the present case, especially when the petitioners received all their retiral benefits including gratuity and CPF benefits.

9. In the result, the petitions fail and are hereby rejected. Rule is discharged with no order as to costs.

(Akil Kureshi, J.)

(vjn)